

**House Families, Children and Seniors Committee****September 19, 2012****Testimony on Senate Bills 246 and 247, and House Bills 4555 and 4556**

**Good morning, Representative Kurtz and members of the House Families Committee:**

I am Maxine Thome, Executive Director for the National Association of Social Workers, Michigan Chapter. We are a 7,500-member organization of a health care profession that provides a wide variety of services to the state's most vulnerable populations, including about 75% of the mental health services in Michigan.

**From a national forensic psychology perspective, leaders in the field are arguing against specific *degrees* that qualify professionals to make competence determinations, and instead are arguing for the need to have specific forensic training and experience.** According to an article in *Social Work* that was written by a professor of law, psychiatric, psychological, and legal observers have noted persistent shortcomings in the quality of evaluations for competence to stand trial since at least 1965. Remedies that have been proposed include increased training, specialization, certification, and credentialing of forensic evaluators. The most significant issue in qualifying experts on competence should not be the nature of their professional designation but the degree to which they have had specialized training, experience, and credentialing in competence evaluation. Enlarging the pool of potential forensic evaluators would expand those eligible for specialized training and could reduce shortages of evaluators. Social workers, the nation's largest category of licensed clinical mental health professionals, are natural candidates for inclusion in an expanded pool of forensic evaluators – especially to evaluate competence to stand trial." (Siegel, David M. (2008). *The Growing Admissibility of Expert Testimony by Clinical Social Workers on Competence to Stand Trial. Social Work* (Vol. 53, No. 2 pp 153-163) Washington, DC: NASW Press.)

**The availability of mental health professionals to provide these services to a court is a consideration as well.** Nationally, competence questions, the most frequently occurring forensic mental health issue in criminal cases, produce an estimated 50,000 to 60,000 evaluations annually. Social workers in mental health organizations and general hospital psychiatric services have outnumbered psychologists and psychiatrists combined in these facilities since 1990. (Siegel, 2008)

In Michigan, every single county has at least one Licensed Masters Social Worker. While not all of these professionals will have the required forensics training, some certainly will. Limiting access to certain professionals will limit access to these services, which is the opposite of what these bills are trying to accomplish.

**The legislation still gives judges the ability to exercise their discretion in running their own courtrooms.** A judge can choose the professional he or she thinks is best suited for the job. A larger, well-qualified pool to choose from will help the courts more effectively and efficiently ensure that justice is served.

In his article, Siegel notes that trial courts – even without explicit statutory or regulatory authority – are expanding the pool of those who can give expert testimony on competence issues to include clinical social workers based on judges' inherent power to qualify persons as expert witnesses. "Greater legal acceptance of clinical social workers

in forensic work generally and in diagnosis of mental disorders has removed barriers – at least for many judges – to qualifying social workers as experts on competence.” (Siegel, 2008)

**Fundamental to the practice of social work is the person-in-the-environment approach. Social Workers are trained to consider all factors that bear on a situation when diagnosing and treating a client. Any truly accurate assessment of competency should ensure that all relevant data is collected and evaluated before a decision of competency is made.** A review of empirical studies from 1983 to 2004 assessing the quality of forensic evaluations, most of which were competency evaluations, noted several areas of deficiency, including evaluators' lack of contact with attorneys in the competence cases and insufficient review of defendants' prior medical and psychiatric records. The approaches of mental health professionals differed by discipline, and social workers often fared best. One study found that the frequency with which report writers contacted attorneys varied from 43 percent for psychiatrists and 45 percent for psychologists to 53 percent for social workers. The frequency with which evaluators reviewed a defendant's prior medical or psychiatric records was ten percent for psychiatrists, 25 percent for psychologists and 35 percent for social workers. **The propensity of social workers to consider a variety of factors in assessing competency can affect judicial outcomes.**

For example, in a New York court case in 2005, the court directly addressed whether the scope of practice for clinical social workers, and so their expertise, reached psychiatric disorders, even when the disorders were of organic etiology or resulted from a concurrent physical ailment or dysfunction. One defendant had been diagnosed by a psychiatrist and a psychologist as incapacitated by dementia from head trauma with resulting cognitive deficits. A social worker later diagnosed the defendant as suffering from post traumatic stress disorder and depression, but nevertheless competent. Another defendant was initially found not competent because of dementia and was committed. He was later judged competent after a social worker traced his dementia to HIV infection that had been untreated at the time of his crime. The court then concluded that the defendant had a valid insanity defense.

The court decision concluded, after extensive comparison of the practice of clinical social work and psychology, that “[c]linical social workers are uniquely suited to assist the courts as forensic experts because of their particular competence in assessing the impact of a person's mental and physical condition on his or her social functioning, a key element in rendering forensic mental health assessments and opinions.”

**Courts have found that the expert opinions of clinical social workers on mental health issues, including competence, have been equally admissible with those of psychologists on the theory that clinical social workers are also skilled in diagnosis and treatment of mental disorders.** The article by Siegel notes the similarities between the professions, including 1) both professions evaluate clients, make diagnoses and construct treatment plans, 2) the scope of practice for both professions involves rendering diagnoses that may in part be based on organic or physical conditions, conducting psychodiagnostic testing and providing psychotherapy (like psychologists, social workers are involved in the development of diagnostic criteria and categories through work on the DSM or Diagnostic and Statistical Manual for Mental Disorders published by the American Psychiatric Association) and 3) both are licensed mental health professions whose licensure has formal educational and supervised practice requirements as well as a nationally administered examination.

**Much has been made about the use of tests and assessment tools in determining competency. It helps, however, to bear in mind that tests and tools change over time, each has its advantages and disadvantages** Social workers have consistently called on psychologists when testing is necessary. We are willing as a profession to work as a team when necessary.

**Demonstrating cultural competency is a core requirement for graduation from an accredited social work program -- a skill that can help balance the deficiencies of standardized assessment tools, provide needed human insight into a juvenile defendant's behavior, and yield a more accurate evaluation of his or her competency.**

**The diversity of the licensed clinical social workers also makes the profession uniquely suited to address another issue relevant to competency hearings – the disproportionate number of minority youth in the juvenile justice system.** A competency evaluator with whom a defendant can identify and who can appreciate the cultural environment of the defendant can more readily obtain from the defendant information pertinent to the competency determination and evaluate assessment tools for deficiencies and biases.

**Social workers already meet the general qualifications listed in the article for a competence evaluator as drawn from various studies of identified deficiencies in evaluations and general principles of best practices for forensic evaluations.** For example, social workers are already qualified to conduct mental status exams, perform clinical interviews, and collect and assess collateral information and third-party records, and are trained in diagnosing and treating mental disorders. NASW-MI wholeheartedly supports the additional training and experience in competency standards and forensic evaluation procedures required by the legislation. We always want to ensure that the most skilled, knowledgeable and highly trained professionals are working with one of our most vulnerable populations – our children.

**Fifteen other states, either explicitly or implicitly, allow social workers to be appointed as forensic examiners,** including North Carolina, South Carolina, Nevada, Tennessee, Utah, Washington, Connecticut, Louisiana, Arkansas, California, Florida, Georgia, Idaho, New Mexico and Oklahoma.

**I do want to make one additional point and this is on the requirement in the legislation that charges against a juvenile be dismissed if he or she is found incompetent or if restoration is improbable.** Although the court may determine custody of the juvenile, incarceration is not an option, there may be limited availability for ongoing treatment of the juvenile, and a lack of any intervention or service may result in repeat offences by the juvenile. Since the legislation addresses in detail competence evaluations, restoration and timelines for restoration, and requires the court to determine custody, it is fair and logical that the bills also provide the courts with viable options for custody. We would be happy to work with the subcommittee and other interested parties in drafting language to accomplish this goal.

**In summary, social workers, with the specialized training in forensic evaluation that is being proposed for all of the professions, are eminently qualified to perform these assessments and bring a unique perspective to the process that can significantly affect judicial decisions.**

Thank you for allowing me time this morning to present this testimony on behalf of social workers and one of the vulnerable populations they serve, i.e., children in the juvenile justice system.